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LAU KUNG KAI

v.

ABU SERAH BOL

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HIGH COURT SABAH & SARAWAK, SIBU
HAMID SULTAN ABU BACKER JC
[CIVIL APPEAL NO: 12-1-2008]
14 MAY 2008

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CIVIL PROCEDURE: *Appeal - Damages - interference by appellate court - Appellate court will not interfere with award of damages merely on complaint that it is excessive - Interference by appellate court only where award of damages is erroneous - No reason to disturb award*

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DAMAGES: *Appeal - Appeal against quantum - Road accident - Dependency claim - Whether appellate interference warranted - Whether quantum for loss of support was erroneous - Whether EPF contribution can be taken into account in assessing suitable multiplicand in a dependency claim - Whether excessive interest awarded*

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DAMAGES: *Fatal accident - Dependency claim - Whether prudent for trial court to order awards to be directly payable to relevant dependants - Claim brought by administrator - Hardship to dependents if money is not immediately released by administrator to dependents*

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This appeal arose from a joint trial held in the Sessions Court in respect of two claims which arose out of the same road accident. In respect of loss of support the appellant claimed that the multiplier, multiplicand and the basis of calculation adopted by the learned sessions judge was wrong. The respondent argued that the learned trial judge was correct to give the multiplier of 16 years since the deceased was 24 years old at the time of death. The learned trial judge considered the living expenses of RM100 and the RM400 payment for the car and his traveling allowance of RM1,000 per month. The learned trial judge also awarded the multiplicand of RM670 per month. In respect of EPF contribution the appellant said that the learned judge ought to have dismissed the plaintiff's claim for loss of contribution to EPF as there was no other evidence apart from the letter from the employer to show that EPF contribution was made. On the award of interests, the learned sessions judge awarded interest at 6% per annum for special damages from date of accident to date of judgment and for general damages, interest at 8% per annum from date of summons to date of judgment.

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Held (dismissing the appeal with costs to the respondent):

(1) As a general rule the appellate court will not interfere with award of damages merely on the complaint that it is excessive, unless the amount arrived at was erroneous in that there was an omission on the part of the trial judge to consider some relevant materials, or had admitted for purposes of assessment some irrelevant considerations. All the issues raised by the parties had been dealt with meticulously within the norms of legal jurisprudence and case laws. There was no reason to disturb the same relating to quantum. (paras 12 & 13)

(2) The complaint that the quantum for loss of support was erroneous had no merits, in view of s. 7(3)(iv)(d) of the Civil Law Act, 1956, and other provisions of the said Act. (para 13)

(3) The complaint that the EPF contribution must not be taken into account had no merits when the purpose was to assess a suitable multiplicand in a dependency claim. Courts have even considered EPF contribution in cases other than dependency claims. (para 13)

(4) On the complaint of excessive interest, there was no merits. Presently the general practice of awarding interest is 4% per annum for special damages, from the date of the accident to the date of judgment. 8% interest per annum is awarded for general damages in respect of pain and suffering and loss of amenities from date of service of writ to the date of judgment. Future loss of earning does not carry interest. However, the court normally awards 8% per annum in respect of judgment sum from the date of judgment until the date of realization. That does not necessarily mean that the court cannot award higher rate of interest within the parameters of the law taking into consideration the prevailing rates of interest. (para 13)

(5) The respondent was suing as an Administrator and the award made was also for the dependents. In such circumstances it would be prudent for the trial court to order the awards to be directly payable to the relevant persons and/or on their behalf if they are minors to ensure that the money does not go into the hands of the Administrator *per se* and dealt with by the Administrator as it may lead to hardship to dependents if the money is not immediately released to the dependents and/or to avoid any form of dispute between the administrator and the dependents. (para 13)

Case(s) referred to:

Bujang Mat & Anor v. Lai Tzen Hai & Anor [2004] 4 CLJ 127 HC ***(refd)***
Goh Chai Huat v. Lee Mui Ping & Ors [2000] 4 CLJ 319 CA ***(refd)***
Ibrahim Ismail & Anor v. Hasnah Puteh Imat & Anor and Another Appeal [2004] 1 CLJ 797 CA ***(refd)***

A *Latif Che Ngah & Anor v. Maimunah Zakaria [2002] 4 CLJ 442 HC* ***(refd)***
Lim Yoke Eng v. Chan Chin Min & Anor [1994] 3 CLJ 792 HC ***(refd)***
Low Suit (MW) & Tan Mee Kiau v. Lim Sun Hiang & Anor [1992] 2 CLJ 1035; [1992] 2 CLJ (Rep) 813 HC ***(refd)***
Manogharan Veeramuthu & Anor v. Fauziah Md Isa [2005] 3 CLJ 217 HC ***(refd)***
B *Murtadza Mohamed Hassan v. Chong Swee Pian [1979] 1 LNS 57 FC* ***(refd)***
Noor Azahar Habin v. Rajaswari Sithampara Pillai & Anor [1991] 1 CLJ 150; [1991] 3 CLJ (Rep) 339 HC ***(refd)***
Soh Hau Huat v. Mohd Nor Taya & Anor [1992] 4 CLJ 2185; [1992] 3 CLJ (Rep) 600 HC ***(refd)***
C *Tan Kuan Yau v. Suhindrimani Angasamy [1985] 1 CLJ 429; [1985] CLJ (Rep) 323 FC* ***(refd)***

Legislation referred to:
Civil Law Act 1956, ss. 7(3)(iv)(c), (d), 11
Subordinate Courts Rules 1980, O. 28 r. 18

D *For the respondent/plaintiff - Lim Heng Choo; M/s Lim & Lim Advocates*
For the appellant/defendant - Liew Tang Chieh; M/s Tang & Partners Advocates

Reported by Amutha Suppayah

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JUDGMENT

Hamid Sultan Abu Backer JC:

[1] This is my judgment in respect of the appellant/defendant's appeal
F against the decision of the learned sessions judge on quantum only.

Brief Facts

[2] In this case there was a joint trial in the sessions court in respect of Summons No. SSK-53-04-2003 between Nor Rosmawati Binti Maliki
G and Lau Kung Kai and Summons No. SSK-53-11-2003 between Abu Serah Bin Bol against Lau Kung Kai. The two claims arose out of the same road accident, between a taxi driven by the appellant and a motor car driven by the deceased Mohamed Sulaiman Abu Serah, who was then 25 years. The learned sessions judge had dealt both the cases in
H one judgment, which is about 15 pages.

Memorandum Of Appeal

[3] The appellant in a lengthy memorandum of appeal attacks almost each and every item of the claim and is dissatisfied with the quantum
I of the claim. The said memorandum of appeal *inter alia* reads as follows:

1. The learned judge erred in law and/or in fact and/or misdirected herself in allowing the plaintiff's claim for loss of support in the sum of RM128,640.00.

   (a) The learned judge failed to consider the clear admission of PW7 that her husband, the late Mohammad Sulaiman Bin Abu Serah ("the Deceased")'s living expenses was more than RM100.00 every month.

   (b) The learned judge erred in accepting PW7's evidence that the Deceased has traveling allowance of RM1,000.00 plus when there was no such evidence given by PW2, the superior of the Deceased. The learned judge ought to have accepted the clear undisputed evidence of PW2 that the allowances which the Deceased received every month are Regional allowance, Imbuhan Tetap Perumahan and Civil Service Allowance as substantiated by Exhibit P6 (letter of Jabatan Kesihatan Bahagian Sibu dated 16.12.2003, page 7 of Bundle H).

   (c) The learned judge failed to consider properly the evidence given by PW7 that the Deceased was always on traveling (page 34 Notes of Proceedings). The learned judge ought to have found that had the Deceased been always on traveling, the traveling expenses would have appeared in Exhibit P6 (letter of Jabatan Kesihatan Bahagian Sibu dated 16.12.2003, page 7 of Bundle H). But there was no such evidence stated in Exhibit P6 or testified by PW2.

   (d) The learned judge erred in law and/or in fact for taking judicial notice that the government officer such as the Deceased was entitled to claim traveling allowance under the service regulation when there was no such evidence given by PW2, the superior of the Deceased that the nature of Deceased's job required the Deceased to always go on traveling.

   (e) The learned judge failed to take into account the monthly car installment of RM400.00 and the hobby expenses in modifying car as the living expenses of the Deceased.

   (f) The leaned judge erred in law and/or in fact and/or misdirected herself in adopting the statutory multiplier of 16 years for failing to consider the case of *Chan Chin Ming & Anor v. Lim Yok Eng* [1994] 3 CLJ 792 on the application of Section 7(3)(iv)(d) of Civil Law Act 1956.

   (g) In calculating the living expenses of the Deceased, the learned judge failed to consider the case of *Low suit (M.W) & Tan Kiau v. Lim Sun Hiang & Anor* [1992] 2 CLJ 1035; [1992] 2 CLJ (Rep) 813 and *Soh Hau Huat v. Mohd Nor Taya & Anor* [1992] 3 CLJ (Rep) 600.

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2. The learned judge erred in law and/or in fact and/or misdirected herself in allowing the plaintiff's claim for loss of contribution to EPF.

(a) The learned judge had failed to consider properly and carefully the case of *Goh Chai Huat v. Lee Mui Ping & Ors.* [2000] 4 CLJ 319.

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(b) The learned judge ought to have dismissed the plaintiff's claim for loss of contribution to EPF in the absence of any evidence of such contributions and a letter from EPF before the learned judge.

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(c) The learned judge erred in law and/or in fact in adopting the statutory multiplier of 16 years for failing to consider the case of *Chan Chin Ming & Anor v. Lim Yok Eng* [1994] 3 CLJ 792 on the calculation of the plaintiff's claim for loss of contribution to EPF.

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3. The learned judge erred in law and/or in fact and/or misdirected herself in allowing the amount of RM9,000.00 being the repair costs of the car bearing registration No. QCA 3072:

(a) The plaintiff failed to show any comparative figure from other companies to prove that the amount of RM9,000.00 was fair and reasonable.

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(b) The plaintiff failed to mitigate the costs of repair for failing to ask for discount. Having admitted that the sum of RM9,000.00 was a huge sum, the plaintiff ought to have asked Mega Auto Works for discount.

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(c) The plaintiff has no personal knowledge on the repair of the said car as he did not even know who sent the said car to the workshop, Mega Auto Works for repair.

(d) PW4, the owner of Mega Auto Works failed to prove to the court how the actual cost of repair in the sum of RM9,000.00 was arrived at. PW4's evidence on the detail of damage of the car was plucked out of the air without any documentary proof and it was not substantiated by the evidence of PW1 (the Investigating Officer).

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(e) There are serious inconsistencies, discrepancies and contradictions between the evidence of PW4, the owner of Mega Auto Works and the plaintiff. PW4 claimed that he never issued any official receipt for the RM9,000.00 but the plaintiff alleged that PW4 has issued him 2 official receipts for the amount of RM9,000.00.

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(f) The learned judge erred in law and in fact for failing to invoke s. 114(g) Evidence Act 1950 against the plaintiff for not producing the official receipts in court.

4. The learned trial judge erred in law and/or in fact and/or misdirected herself in awarding interest at 6% per annum for special damages from date of accident on 27 May 2001 to date of judgment. The learned judge ought to have awarded interest at 4% per annum for special damages from date of accident on 27 May 2001 to date of judgment.

5. The learned trial judge erred in law and/or misdirected herself in awarding interest at 8% per annum for general damages from date of summons dated 23 December 2003 to date of judgment. The learned judge ought to have awarder interest at 6% per annum for general damages from date of summons dated 23.12.2003 to date of judgment.

Respondent's Argument

[4] In respect of loss of support the appellant says the multiplier adopted was wrong, the multiplicand adopted was wrong; and the basis of calculation was wrong. The respondent says that the learned trial judge was correct to give the multiplier of 16 years since the deceased was 24 years old at the time of death. (See s. 7(3)(iv)(d) of the Civil Law Act, 1956 (CLA 1956)).

[5] The respondent asserts that the appellant is misconceived as regards its applicable law by citing the case of *Lim Yoke Eng v. Chan Chin Min & Anor* [1994] 3 CLJ 792 as *Min*'s case was not followed in *Latif Che Ngah & Anor v. Maimunah Zakaria* [2002] 4 CLJ 442, *Manogharan a/l Veeramuthu & Anor v. Fauziah Bte Md Isa* [2005] 3 CLJ 217 and *Ibrahim Ismail & Anor v. Hasnah Puteh Imat & Anor and Another Appeal* [2004] 1 CLJ 797. In *Ibrahim Ismail* case, the Court of Appeal held:

(1) The majority in the Supreme Court case of *Chan Chin Ming* was wrong and failed to apply the appropriate guide to statutory interpretation. The majority ought to have addressed the object or purpose of he amendments introduced by Parliament by way of ss. 7(3) and 28A CLA. Parliament's purpose was to address the very high award of damages for personal injuries and death and so fixed a formula to meet a particular mischief of the common laws, the courts are not at liberty to continue to apply the commons law in disregard of the statue. It is this very principle that the majority in *Chan Chin Ming* breached when purporting to interfere with the predetermined statutory formula. Further, the language of the statues is imperative. It says the `the number of years' purchase shall be 16. The mandatory tenor of this phrase employed by Parliament to convey its message

A excludes any pretended exercise of judicial power to substitute some other multiplier for that intended. As such, the dissenting view in Chan Chin Ming should be adopted.

(2) The case of *Chan Chin Ming* was decided before the establishment of this court. It was decided at a point of time B when the High Court had original jurisdiction over personal injury and fatal accident claims. Appeals were preferred to the Supreme Court that stood at the apex of the judicature. That is not the case today. All personal injury and fatal accident claims are now solely within the jurisdiction of the subordinate courts. Appeal are to the High Court and finally to this court. This court C now stands at the apex in respect to the present claims. If a decision and more so a majority decision of the former Supreme Court is obviously wrong, then it is this court's duty to state so especially when it results in an injustice to the party concerned.

D **[6]** Further the respondent says the trial judge had dealt with the salary of the deceased working as a Pembantu Kesihatan Awam with Jabatan Kesihatan Sibu. PW2 from Jabatan Kesihatan Sibu testified before the court about the deceased's salary and his Employee Provident Fund (EPF) contribution.

E **[7]** In addition the respondent says there is no evidence to show that the learned judge had not considered the issue of living expenses of the deceased. The learned trial judge considered the living expenses of RM100 and the RM400 payment for the car and his traveling allowance of RM1,000 per month. Under s. 7(3)(iv)(c) of CLA 1956:

F take into account any diminution of any such amount as aforesaid by such sum as is proved or admitted to be living expenses if the person deceased at the time of his death.

and asserts that the quantum of deduction of living expenses of the deceased is not fixed under s. 7(3)(iv)(d) of the CLA 1956 and hence G the case of *Low Suit (M.W.) & Tan Mee Kiau v. Lim Sun Hiang & Anor* [1992] 2 CLJ 1035; [1992] 2 CLJ (Rep) 813 and *Soh Hau Huat v. Mohd. Nor Taya & Anor* [1992] 4 CLJ 2185; [1992] 3 CLJ (Rep) 600 cannot be taken as authorities that laid down the general principle to be followed by the other courts with references to the said statutory H provision. Further says, the learned trial judge committed no error in her judgment in awarding the multiplicand of RM670 per month, as s. 7(3)(iv)(d) CLA 1956, merely states that the court shall take into account any diminution of any such amount which is proved or admitted to be living expenses and asserts if there is no diminution of the amount I proved or admitted as living expenses, then the court does not need to take into account any diminution of living expenses.

[8] In conclusion on the issue of loss of support the respondent says there is nothing wrong for the learned trial judge to take judicial notice of the deceased working as Pembantu Kesihatan Awam to travel and be entitled for travelling claim under the service regulation as it is public knowledge that the service regulation governing government officers entitle them to go on official travelling and be entitled to claim. This concludes that the learned judge did not err in law and in fact awarded the loss of support in the sum of RM128,640.

[9] In respect of EPF contribution the appellant says that the learned judge ought to have dismissed the plaintiff's claim for loss of contribution to EPF and says in this case there was no other evidence apart from the letter from the employer to show that EPF contribution was made. The appellant heavily relies on the case of *Goh Chai Huat v. Lee Mui Ping & Ors.* [2000] 4 CLJ 319. To this the respondent says that the case of *Goh Chai Huat (supra)* is a case where there was no evidence before the court to show contribution of EPF and asserts there was clear and undisputed evidence in exh. P6 and the testimony of PW2 that the deceased and Jabatan Kesihatan were contributing to EPF. The respondent says the learned trial judge had properly considered the claim of loss of EPF and he had rightly considered the issue of EPF by referring to the testimony of PW2 and exh. P6, and asserts the learned trial judge did not err in law or in fact on the award of EPF.

[10] In respect of repair costs the appellant says there was no assessment of damages and the learned sessions judge had relied on the evidence of the proprietor of workshop and the invoice in the sum of RM9,000. The appellant complains that the learned sessions judge had failed to take into account the fact that no comparative figure from other companies was adduced by the plaintiff to prove that the said amount of RM9,000 was fair and reasonable in the market. Further the appellant says the award was made without taking into consideration the duty to mitigate the costs of the repair by asking for a discount. To this, the respondent says that the trial judge had properly appraised all the evidence before awarding the repair costs of RM9,000 as fair and reasonable sum.

[11] Finally on the award of interests, the appellant says the learned sessions judge awarded interest at 6% per annum for special damages from date of accident to date of judgment and for general damages, interest at 8% per annum from date of summons to date of judgment. The appellant says the interest must be varied as follows:

(a) interest at 3% per annum for special damages from the date of the accident to date of trial: and

A (b) interest at 6% per annum for general damages from the date of service of the summons to date of trial.

In support of the above the appellant relies on the case of *Murtadza Bin Mohamed Hassan v. Chong Swee Pian* [1979] 1 LNS 57, where the
B Federal Court held that: (i) interest at 3% would be awarded on the special damages from the date of accident to date of trial and at 6% on the general damages for pain and suffering and loss of amenities from date of service of writ. (ii) No interest should be allowed for the damages for loss of future earnings. To this the respondent says that:

C (i) Section 11 of CLA 1956 and O. 28 rule 18 of the Subordinate Court Rules 1980 empower the court to give interest over and above the sum for which judgment is given. (ii) The period from which the interest is to run, and the rate at which the interest is to be given, is purely discretionary.

D Following the authority cited above, the respondent says the award of pre-trial interest for special damages under s. 11 of the Civil Law Act 1956 is a matter of discretion. And relies on the case of *Bujang Mat & Anor v. Lai Tzen Hai & Anor* [2004] 4 CLJ 127, where the learned judge awarded the pre-trial interest for special damages at 6% per annum from
E date of accident to judgment and thereafter at 8% per annum and pre-trial interest of 8% per annum for general damages from date of summons to full and final settlement. The respondent asserts that the learned trial judge did not err in law and in fact in awarding the pre-trial interests for special and general damages.

F **Law On Quantum**

[12] As a general rule the appellate court will not interfere with award of damages merely on the complaint that it is excessive, unless the amount arrived at was erroneous in that there was an omission on the
G part of the trial judge to consider some relevant materials, or had admitted for purposes of assessment some irrelevant considerations. There are number of cases in support of this proposition. In *Tan Kuan Yau v. Suhindrimani Angasamy* [1985] 1 CLJ 429; [1985] CLJ (Rep) 323, Abdul Hamid CJ (as he then was) observed:

H Now, in an appeal on quantum of damages it is essential in order to come to a conclusion to bear in mind certain principles which are well established. The appeal court is slow, disinclined to interfere with the Judge's finding merely because the appeal court thinks that if the case had been before it in the first instance a lesser sum would have been awarded. Azmi, C.J. (Malaya)(as he then was) giving the Judgment of
I the Federal Court in *Topaiwah v. Salleh* said that:

> ... so far as this court is concerned we should, to paraphrase Greer L.J. in *Flint v. Loveil* be disinclined to reverse the finding of a trial judge as to the amount of damages merely because we think that if we had tried the case in the first instance we would have given a lesser sum. To justify reversing him, we should be convinced that he acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damage. The assessments which the courts have made over the years form some guide to the kind of figure which is proper and which the appellate court will follow in the light of the special facts of each particular case.
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> (See *Flint v. Lovell*)

In *Greenfield v. London and North Eastern Railway Company* (3), MacKinnon, L.J. had this to say:

> The principle on which the Court of Appeal reviews the assessment of damages, whether too high or too low, is not because the Court of Appeal might have given rather more or rather less, but only (1) if the Judge has omitted some relevant consideration or admitted some irrelevant consideration, or (2) if the amount is so excessive, or insufficient, as to be plainly unreasonable.

Lord Evershed, M.R. in *Wilson v. Pilley* (4) emphasized that:

> ... interference by this court with an award of damages by the trial Judge must be a rare thing, and may I say that it should be perhaps even rarer in relatively small cases tried in the county court. No one would suggest that, because this court thought that the damages small in any case, were rather on the low side, this court could consider for a moment slightly raising the figure or adopting the converse course in a different kind of case. In other words the onus is on an appellant seeking to interfere with an award of damages, particularly within this sort of scale, is a heavy one.

We would also refer to *Elliot v. Preston* (5) where Salmon L.J. had this to say:

> Before we can interfere, there has to be (in the phrase which is hallowed, but has now I think a rather archaic ring) a wholly erroneous estimate of damage. That I have always regarded as meaning that a court has to be satisfied that it is very wrong. If you are satisfied that it is wrong, and seriously wrong, then not only is this court entitled to interfere, but it is its duty to interfere. I would agree ... that you cannot say, if it is wrong by such and such a percent, you do interfere, and if it is not you do not. I think each case stands by itself, and a great deal depends upon the amount of the award.

[13] I have read the appeal record and the submissions of the parties in detail. I take the view that the appeal must be dismissed with some amendment to the order of the trial court, to make sure the award goes to the right person and not to the administrator for it involves dependency claim and all the defendants are not the plaintiffs in this case. My reasons are as follows:

(i) I have read the 15 page judgment of the learned sessions judge and I find that all the issues raised by the parties have been dealt with meticulously within the norms of legal jurisprudence and case laws. I do not find any reason to disturb the same relating to quantum.

(ii) The complaint that the quantum for loss of support was erroneous has no merits, in view of s. 7(3)(iv)(d) of the CLA 1956, and other provisions of the said Act. I agree with the submission of the respondents.

(iii) The complaint that the EPF contribution must not be taken into account has no merits when the purpose was to assess a suitable multiplicand in a dependency claim. Courts have even considered EPF contribution in cases other than dependency claim. For example in *Noor Azahar Habin v. Rajaswari Sithampara Pillai & Anor* [1991] 1 CLJ 150; [1991] 3 CLJ (Rep) 339 HC which was an accident case where the plaintiff became paraplegic and there was a dispute as to multiplicand for future loss of earnings, etc. inclusive of loss of EPF contribution, the court observed as follows:

> To my mind the plaintiff is entitled to be compensated for the loss of his employer's contribution to the Employee's Provident Fund. The multiplier in this regard should also be 14.

On the issue of entitlement to EPF employer's contribution, the above-quoted case was cited with approval in *Soh Hau Huat @ Anthony v. Mohd Nor Taya & Anor* [1992] 4 CLJ 2185.

(iv) On the complaint of excessive interest, I do not find any merits. In *Murtadza Bin Mohamed Hassan (supra)*, the Federal Court held that:

> Interest at 3% would be awarded on the special damages from the date of accident to date of trial and at 6% on the general damages for pain and suffering and loss of amenities from date of service of writ. No interest should be allowed for the damages for loss of future earnings.

Chang Min Tat FJ (as he then was) observed:

> On the interest that should be awarded, ever since the decision of the Court of Appeal in England in *Jefford v. Gee* at page 1212 which has been consistently followed by the courts in England and here, interest

has been awarded at one half the appropriate rate on special damages from the date of the accident to date of trial and on general damages for pain and suffering and loss of amenities at the appropriate rate from the service of the writ, but no interest is awarded on loss of future earnings. For this reason, awards on a global basis as was ordered in this case are wholly inappropriate for the imposition of interest. In *Cook-son v. Knowles*, the Court of Appeal took a different attitude and refused to award interest on the sum assessed for pain and suffering and loss of amenities on the theory that any damages were now normally subject to increase to take case of inflation, and there was no occasion to award interest as well. The House of Lords in *Pickett v British Rail Engineering Ltd.* disapproved of this change. With this disapproval, the position with regard to interest reverts to *Jefford v. Gee*. In *Foong Nan v. Sagadevan* at page 26, this court followed *Jefford v. Gee*, *(supra)* and put the appropriate rate at 6%. In the absence of any advice of any increase in this rate, I propose to continue to accept this rate.

The appeal is therefore allowed to the extend that the general damages for pain and suffering and loss of amenities are determined at $20,000 and the loss of future earnings at $15,633. Special damages remain at $16,636.80. Interest at 3% on special damages from date of accident to date of trial and at 6% on the general damages for pain and suffering and loss of amenities from date of service of the writ.

The appellant should have the costs of the appeal.

Abdoolcader J. concurred.

HRH Raja Azlan Shah CJ (as HRH then was) opined:

> I have had the advantage of reading the judgment of my brother Chang Min Tat and agree with his conclusion that the appeal should be allowed to the extent there set out. I only wish to say something on the question of interest in claims for personal injuries.
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> It is now well recognized, on principle and authority, that the courts must itemize the award of damages in personal injury cases under three separate heads, namely special damages, compensation for pain, suffering and loss of amenities and lastly, loss of future earnings. In *Jefford v. Gee* Lord Denning M.R. said at page 1212 that "the court will, in future, have to itemize the damages in most personal injury cases." This is because different rules of interest apply under the separate heads. An award of interest must be made having regard to the temporal conditions applicable to them. Thus under the head of special damages the discretion to award interest is calculated from the date of the accident; an award under pain, suffering and loss of amenities carries interest from the date of service of the writ to the date of trial; an award for future earnings carries

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> no interest at all. The reason for awarding interest is to compensate the plaintiff from being kept out of money which theoretically is due to him at the date of the accident. Therefore, to allow interest on the award of damages for future earnings are wrong on the ground that the plaintiff ex hypothesis has not been kept out his money.

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It must be emphasized here that the Federal Court did recognize the fact that the award of interest is discretionary. Presently the general practice of awarding interest is 4% per annum for special damages, from the date of the accident to the date of judgment. 8% interest per annum is awarded for general damages in respect of pain and suffering and loss of amenities from date of service of writ to the date of judgment. Future loss of earning does not carry interest. However, the court normally awards 8% per annum in respect of judgment sum from the date of judgment until the date of realization. That does not necessarily mean that the court cannot award higher rate of interest within the parameters of the law taking into consideration the prevailing rates of interest. (See s. 11 of Civil Law Act 1956 and O. 28 r. 18 of Subordinate Court Rules 1980). In this case it must be taken into consideration that the claim is also related to dependency, and the cases cited by the appellant's may not be relevant.

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(v) In this case the respondent is suing as an Administrator and the award made is also for the dependents. In such circumstances it will be prudent for the trial court to order the awards to be directly payable to the relevant persons and/or on their behalf if they are minors to ensure that the money does not go into the hands of the Administrator per se and dealt with by the Administrator as it may lead to hardship to dependents if the money is not immediately released to the dependents and/or to avoid any form of dispute between the administrator and the dependents.

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[14] For the following reasons, I dismiss the Appeal with costs to the respondent. The getting up fees shall not exceed RM30,000. If costs cannot be agreed, the respondent is at liberty to tax the costs. I shall amend the judgment to apportion the award to the name of the right persons and/or dependents after hearing the parties.

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I hereby order so.

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